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9 SHERIFF LAURIE SMITH and  
10 COUNTY OF SANTA CLARA

11 UNITED STATES DISTRICT COURT  
12 FOR THE NORTHERN DISTRICT OF CALIFORNIA

13 TOM SCOCCA et al.,  
14 Plaintiffs,

15 v.

16 SHERIFF LAURIE SMITH et al.,  
17 Defendants.

No. CV11-01318 EMC

**STATEMENT OF RECENT DECISION**

18 On November 28, 2011, the United States Court of Appeals for the Ninth Circuit voted to  
19 rehear en banc *Nordyke v. King*, Case No. 07-15763, Dist. Ct. Case No. CV-99-04389 (MJJ), and  
20 ordered that the three-judge panel opinion in that case shall not be cited as precedent by or to any  
21 court of the Ninth Circuit. Attached is a copy of the order.

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1 Defendants County of Santa Clara and Sheriff Laurie Smith cited the three-judge panel  
2 decision in *Nordyke* in their motion to dismiss, which is set for hearing on January 6, 2012. The  
3 motion to dismiss was filed on May 27, 2011, when the opinion was citable.

4 Dated: December 28, 2011

Respectfully submitted,

5 MIGUEL MÁRQUEZ  
6 County Counsel

7 By:                     /S/                      
8 Melissa R. Kiniyalocts  
9 Deputy County Counsel

10 Attorneys for Defendants  
11 SHERIFF LAURIE SMITH and  
12 COUNTY OF SANTA CLARA  
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